



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 116-2017

29 December 2017

MR. ROLANDO R. GASPAR
Chairperson, Bids and Awards Committee
BULACAN STATE UNIVERSITY (BULSU)
City of Malolos

Re: Joint Venture; Official Receipt of Bidding Documents -

Dear Mr. Gaspar:

This refers to your request for guidance on whether interested bidders for infrastructure projects who intend to enter into a joint venture agreement (JVA) should disclose the same to the Bids and Awards Committee (BAC) before or during the pre-bid conference and before purchasing the Bidding Documents.

As represented, BulSU conducted a public bidding for the Proposed Seven-Storey BulSU E-Library Building with an Approved Budget for the Contract (ABC) of Php91,830,466.96. Only V.B. Columna Construction Corporation submitted eligibility documents. Thereafter, during the opening and preliminary examination of bids, the lone bidder, V.B. Columna Construction Corporation was declared ineligible because it failed to submit a Single Largest Completed Contract (SLCC). Hence, the BAC resolved to conduct a re-bidding for the said project.

In the re-bidding, four (4) bidders submitted eligibility documents, upon evaluation, one (1) bidder, PLERM Construction entered into a JVA with Reed Steel Fabricators, Inc. After a thorough examination of the eligibility documents, the BAC declared Wing-An Construction and Development Corporation ineligible to bid for its failure to submit the SLCC. The other three (3) bidders were declared eligible, wherein PLERM Construction was declared the lowest calculated bid.

Haidee Construction filed a Request for Reconsideration with the President of BulSU, alleging that the BAC failed "*to scrutinize the JVA between PLERM Construction and the other company; and to mention the name of the other company other than PLERM of the JVA during the proceeding.*" The President deferred acting upon the Request for Reconsideration and instead referred the same to the Chairperson of the BAC, which the BAC denied on the ground that Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR), do not provide that the BAC must mention the names of the bidders that are parties to a JVA. Another Request for Reconsideration was filed by the same Movant but likewise denied by the BAC.

Consequently, Haidee Construction sent a letter to Commission on Higher Education (CHED) relative to the bidding process conducted for the project, which resulted in a meeting with the Chief of Staff to CHED Commissioner Ronald L. Adamat. The Chief of Staff said that since the Official Receipt on the purchase of the Bidding Documents reflects only the name of PLERM Construction, as the payor, the JVA is *void ab initio*.

Nonetheless, the Technical Working Group (TWG) Report finds PLERM Construction and Reed Steel Fabricators, Inc. JV compliant and declared it as the Lowest Calculated and Responsive Bid. It is the BAC's position that there is no rule in competitive bidding for a JV to disclose its intention to enter into a JVA prior to purchasing the Bidding Documents. In addition, the BAC resolved that the fact the Official Receipt was named only in favor of PLERM Construction does not invalidate the JVA between them. Hence, this query.

At the outset, it is noteworthy to emphasize that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) only render policy and non-policy matter opinions, respectively, on issues pertaining to the interpretation and application of our procurement laws, rules and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that apart from the courts having competent jurisdiction over the subject matter of a case, we cannot, nor any other government agency, authority, or official, encroach upon or interfere with the exercise of the functions of the Bids and Awards Committee (BAC), since these duties and responsibilities fall solely within the ambit of its authority and discretion as sanctioned by law.

Joint Venture -

It bears stressing that Republic Act (RA) No. 9184 is governed by the principle of competitiveness, which extends equal opportunity to market operators by enabling private contracting parties who are eligible and qualified to participate in public bidding. In line with this principle, competitive bidding, being open to any interested party, does not prohibit prospective bidders from buying Bidding Documents for a particular project regardless of its qualifications.

Please note that there is nothing under RA 9184 and its 2016 IRR that provide for JV bidders to disclose the fact that it is participating as a joint venture before purchasing the Bidding Documents and participating in the preliminary examination of bids. The purchase of Bidding Documents is separate and distinct from the preliminary examination of bids where the eligibility documents of bidders are checked using the non-discretionary "pass/fail" criterion in the determination by the BAC of the bidders' eligibility.

Under the rules, prospective bidders, after purchasing the Bidding Documents, shall submit their eligibility requirements together with its technical and financial tender on or before the deadline for submission and receipt of bids. As long as the JV bidders comply with the list of minimum eligibility requirements (both the Class "A" and Class "B" documents) under the 2016 IRR, such as those requirements enumerated in Sections 23.1 (procurement of goods and infrastructure projects) and 24.1 (procurement of consulting services), they can participate either as individual or joint venture bidder. This includes other requirements as

indicated in the Bidding Documents provided under RA 9184, its 2016 IRR, and other allied issuances.

To require JV bidders to disclose the fact that it is participating as joint venture prior to purchasing the Bidding Documents and participating in the preliminary examination of bids is not in accordance with the principle of competitiveness. For it may happen that after the review and scrutiny of the project requirements in the bidding documents, the prospective bidder may decide to participate as a joint venture bidder with another entity to be able to comply with technical and financial requirements of the project, or maintain its current joint-venture partner, as the case may be.

Official Receipt of Bidding Documents –

The issue that the Official Receipt was not named after the joint venture but only under the name of one partner, PLERM Construction, is of no moment. The BAC may want to check whether PLERM Construction purchased the Bidding Documents as the lead partner of the JV, as its authorized representative, in such case, the purchased Bidding Documents was made in favor of the JV. Nonetheless, the Official Receipt evidencing purchase of the Bidding Documents need not be in the name of the joint venture bidder. So long as the purchase was in favor of the joint venture, that shall suffice.

It will be noted, however, that RA 9184 and its 2016 IRR do not expressly provide that the purchase of Bidding Documents shall vest solely on a particular buyer or prospective bidder the right to participate in the bidding process using the very set of Bidding Documents purchased.¹ Pursuant to Section 17.4 of the IRR, “[b]idders may be asked to pay a fee to recover the cost for the preparation and development of the Bidding Documents pursuant to the Guidelines on the Sale of Bidding Documents.” A perusal of the cited provision shows that it does not in any way restrict the use or the transfer of the right or privilege arising from the purchase of the Bidding Documents. What is necessary, however, is that the Bidding Documents used by the bidder in submitting its bid has been paid for in case the procuring entity charges fees for its Bidding Documents.²

Summary -

In sum, we wish to stress the following:

1. There is nothing under RA 9184 and its 2016 IRR that requires JV bidders to disclose the fact that it is participating as a joint venture before purchasing the Bidding Documents and participating in the preliminary examination of bids.
2. The Official Receipt evidencing purchase of the Bidding Documents need not be in the name of the joint venture bidder. What is necessary, however, is that the Bidding Documents used by the bidder in submitting its bid has been paid for in case the procuring entity charges fees for its Bidding Documents.

We hope this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and

¹ See Non-Policy Matter (NPM) Opinion No. 62-2012, dated 18 May 2012, on a similar issue under 2009 revised IRR of RA 9184.

² *Ibid.*



may not be applicable given a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

(sgd.)

~~DENNIS S. SANTIAGO~~
Executive Director *ms*

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